

In Support of HB205

March 4, 2009

Chairman Perry and Honorable Members of the Senate Judiciary Committee:

My name is Nancy MacCracken and I am the Senior Law Clerk for the Sixth Judicial District Court in Livingston and Big Timber. I am here today to testify as a proponent of House Bill 205.

Post-conviction relief is a civil process in which a person convicted of a crime and sentenced may request that the sentencing court review the original sentence and revise it. Defendants utilize this process when they cannot appeal.

Post-conviction relief petitions come before our district courts regularly. Currently, the statutes require service of the petition upon the Attorney General and the County Attorney with an order for both to respond. However, the practice has been for those offices to receive the petition, usually by mail, and for the Attorney General to then direct the County Attorney to respond. The Attorney General does not usually respond, unless the County Attorney has a conflict of interest. That practice qualifies as conforming to the "spirit of the law", but may create an appealable issue, because it does not conform to the "letter of the law". This past year, when the district court for whom I clerk served the Attorney General with a petition, acknowledgment of receipt of service and order to respond in a post-conviction case, it brought this issue to light and prompted this legislation request.

"Service" requires that someone, usually a law enforcement officer or process server, physically deliver the documents and file a return of service or, in the alternative, that an acknowledgment and receipt of service accompany the documents with the request that the documents will be signed and returned to be filed. "Service" costs law enforcement time or costs the Court money paid to a process server, and acknowledgments and receipts of service cost time for the Court to prepare. The reality is that both are unnecessary because neither the County Attorney nor the Attorney General is going to ignore an order from a District Court to respond to a petition. However, as the law currently reads, we must serve both of them and they both must respond, which leads us to the amendment.

House Bill 205 amends Section 46-21-201, of the Montana Code Annotated so that, in the event the court determines a petitioner may be entitled to relief, the court can send the petition for post-conviction relief to the County Attorney and the Attorney General, rather than having them served and orders that either of those offices may respond. The Attorney General will then determine whether the Attorney General will respond or direct the county attorney to do so. This saves Judicial time and money, saves law enforcement time, eliminated the possibility for appeal on that issue and brings the statute into compliance with what has become regular practice over time. I ask you to recommend passage of House Bill 205.

Thank You.